IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1276 OF 2004

In

EXECUTION APPLICATION NO.131 OF 2004

(Award dated 4th February, 2003)

M/s.Bharat Salt Refineries Ltd. : Claimants

V/s.

Rainbow Corporation Ltd. : Respondents

And

Union Bank of India : Applicants

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Mr.Rahul Naricharia i/b. M/s.Motiwalla & Co., for the claimants.

Mr.C.S.Balsara i/b. Ms N.I.Bakali for the applicants.

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CORAM : F.I. REBELLO, J.

October 1, 2004.

P.C.:

1. The applicant, Union Bank of India, has moved this Court to raise a warrant of attachment dated 28.4.2004 issued by this Court in proceedings for execution taken out by the claimants in respect of an award dated 4.2.2003 in their favour and against the respondent/

judgement-debtor.

2. The applicants had moved the Debt Recovery Tribunal in respect of their claim against the respondents. Subsequent to the judgment of the Debt Recovery Tribunal, the applicants had obtained a Recovery Certificate in proceedings for execution of the order of the Debt Recovery Tribunal. The warrant of attachment has been issued. However, that could not be executed as this Court in the proceedings initiated by the present claimants had passed an order on 28.4.2004 attaching the immovable properties as described in prayer clause (a) of the present Chamber Summons. On behalf of the claimants/decree-holders, their learned counsel relied on a judgement of the apex Court in the case of Kabidi Venku Sah v. Syed Abdul Hai & anr. (A.I.R. 1984 S.C. 117). On the other hand, on behalf of the applicants, it is pointed out that subsequent to the judgement of the apex Court in Allahabad Bank v. Canara Bank & Anr. [(2000) 4 S.C.C. 406] and considering the order passed by the Debt Recovery Tribunal and considering that the applicants are claiming right in the property as secured creditors as they have in their favour a mortgage, it is pointed out that all claims should now be filed before the Recovery Officer under the Recovery of Debts Due to Banks and

Financial Institutions Act, 1993.

3. Having heard the learned counsel, I am of the opinion that it would be appropriate, considering the judgement in Allahabad Bank's case (supra), that the relief as prayed for by the applicants should be allowed. Once that is allowed, the question then would be where the claim of the claimants can be adjudicated. The claimants then would be entitled, considering that they have an award in their favour, to file their claim before the Recovery Officer against the sale proceeds or if they are so entitled to against the sale of the property itself. At any rate, if the claimants apply to the Recovery Officer, it would be open to them to raise all objections which they would be entitled in law, including their contention that they are secured creditors and that their right is prior to that of the applicants herein. That would be for the Recovery Officer to decide on the contentions advanced by the parties.

4. It is also pointed out on behalf of the claimants that they would be entitled to challenge the order of the Debt Recovery Tribunal itself, considering that they were not parties to the said proceedings. It is not for this Court to decide the same. It will be open to the claimants, if

they are so entitled in law, to take out appropriate proceedings before the appropriate forum which they would be entitled to. Considering the above, the following order:-

O R D E R

The Chamber Summons is made absolute in terms of prayer clauses (a), (b) and (c). It is made clear that the order of attachment issued by the Court dated 28.4.2004 will subsist till the attachment is formally executed by the Recovery Officer. The Chamber Summons stands disposed of accordingly.

Sd/-

(F.I. REBELLO, J.)